

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 2004

LEGAL DRAFTING AND INTERPRETATION

(MONDAY, AUGUST 2, 2004)

Instructions to Students

- (a) Time: 3 ½ hours
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply by reference to the law of any Commonwealth Caribbean territory, **but must state at the beginning of the answer the name of the relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## QUESTION 1

Section 10 of an Act which provides for the control of narcotic drugs reads as follows-

- “10. A peace officer may, at any time
- (a) without a warrant enter and search any place other than a dwelling-house, and under the authority of a writ of assistance or a warrant issued under this section, enter and search any dwelling-house in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;
  - (b) search any person found in such place; and
  - (c) seize and take any narcotic found in such place, any thing in such place in which he reasonably suspects a narcotic is contained or concealed, or any other thing by means of or in respect of which he reasonably believes an offence under this Act has been committed or that may be evidence of the commission of such an offence.”

The accused owns and operates a small grocery store. One day, when the accused was in the store, a peace officer entered and told the accused he was searching for prohibited drugs; he had no writ of assistance or warrant. After searching the store and finding no drugs, he attempted to search the accused. The accused objected and forcibly ejected the peace officer from the store and locked the door. A charge of resisting a peace officer in the lawful execution of his duty was laid against the accused. At the trial, the peace officer admitted on

cross-examination that he had no grounds whatever to believe that the accused had any prohibited drugs in his store or on his person.

It is conceded that if the attempted search of the accused was illegal, the charge should be dismissed; but if the attempted search was lawful the accused should be convicted.

As the trial judge, what is your judgment? Give reasons.

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## QUESTION 2

The accused, Wiskey Whyte, was charged that he unlawfully had liquor in a vehicle contrary to section 5 of the Drug and Liquor Control Act.

The evidence before the Magistrate disclosed that on November 10, 2003, at about 9:00 p.m., on his way home to dinner, Wiskey who was a route taxi driver, drove to the supermarket in his taxi and purchased liquor which he placed in his taxi for the purpose of driving to his home and leaving the liquor there. He had no passengers in the vehicle and he was not driving on his route.

Before he reached home he was stopped by the police in a road block and the liquor was found in the taxi, and the charge referred to above was laid.

The taxi is a vehicle defined in the Road Traffic Act, and the accused's home is a place where liquor may be lawfully consumed.

Section 5 of the Drug and Liquor Control Act states:

"(1) Subject to subsection (2) ... no person by himself, his servant or agent shall have or keep or consume or give liquor in a vehicle as defined in The Vehicles Act.

(2) Subsection (1) does not render it unlawful to have liquor in such a vehicle for the purpose of transporting the liquor from the store or from the outlet ... at which it was purchased to a place where it may be lawfully had or kept or consumed or from such a place to another place where liquor may be lawfully had or kept or consumed.

(3) Subsection (2) does not apply with respect to liquor being transported in a vehicle used for carrying passengers for hire or gain unless the liquor is in the possession of a person who is a bona fide passenger in the vehicle."

The Magistrate found Wiskey not guilty and stated that in interpreting section 5 (3), he was of the view that the word "while" had been omitted from the second line and that it should be inserted between the words "vehicle" and "used". To do otherwise, he said, would be to produce an absurd result.

He further cited as authority for this approach the dictum of Lord Denning in *Nothman v Barnet Council* [1978] 1 WLR 220, 223 where he said –

"Faced with glaring injustice the judges are, it is said, impotent, incapable and sterile. Not so with us in this court. The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the 'purposive approach'."

As Director of Public Prosecutions/Attorney General, assuming that you could appeal this decision, would you do so? Give reasons.

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**QUESTION 3**

Your law firm represents Prince Lame. Prince was convicted as a sexually violent person under section 12 of the Sexual Offences Act and committed under section 13 of that Act to a mental hospital. Section 22 of the Sexual Offences Act provides:

“(1) If a person has been committed under s. 13, the Department of Health shall conduct an examination of that person's mental condition within six months after conviction under s. 12 and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress to be entitled to transfer to a less restrictive facility, to supervised release or to discharge. At the time of the re-examination under this section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.

(2) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than thirty days after the date of the examination. The examiner shall place a copy of the report in the person's medical records and shall provide a copy of the report to the court that committed the person under section 13.

(3) Notwithstanding subsection (1), the court that committed a person under section 13 may order a re-examination of the person at any time during the period in which the person is subject to the committed order."

The principal purposes of section 22 are the protection of the public and the treatment of convicted sex offenders who are at a high risk to re-offend in order to reduce the likelihood that they will engage in such future conduct.

The Department of Health failed to conduct an initial re-examination of Prince's mental condition within the six-month period. Eleven months after his committal Prince has still not received the required initial re-examination under section 22. Yesterday you were advised that Prince's initial examination will take place in two weeks. Your firm is considering whether it should file a petition for a *writ of habeas corpus* requesting that Prince be discharged from the section 13 committal on this basis.

What is your opinion? Give reasons.

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#### QUESTION 4

Mikey, a passenger in Tom's van, was sitting in the passenger's seat when Corporal Sherlock approached the van and enquired as to the whereabouts of the driver. Mikey told him that Tom, who was the driver, was delivering goods and that he would return shortly. Corporal Sherlock pointed out that the van was parked in a "no parking zone" and that it had better not be there on his return.

Five minutes later when Tom had not returned Mikey decided that he would move the van out of the “no parking zone”. He therefore, began pushing the van with his shoulders against the door pillar and both feet on the ground with one hand on the steering wheel directing the van. While doing this Corporal Sherlock returned to the area, approached Mikey and asked him for his driver’s licence. Mikey told him that he was not the holder of a driver’s licence whereupon Sherlock arrested him and charged him with driving a vehicle without being the holder of a driver’s licence contrary to Section 4 of the Road Traffic Act.

Section 4 provides –

“4. No person shall drive a motor vehicle on a road unless he is the holder of a driver’s licence for a motor vehicle of that class, and no person shall employ any person to drive a motor vehicle on a road unless the person so employed is the holder of a driver’s licence for a motor vehicle of that class, and if any person acts in contravention of this provision, he shall be liable to a fine of five thousand dollars or imprisonment for six months”.

It has been submitted by the prosecution that –

1. Under the Road Traffic Act a driver is defined thus –  
“driver” includes any person actually driving a motor vehicle at any given time and any person in charge thereof for the purpose of driving whenever the same is stationary on any road”;
2. the dictionary meaning of “drive” in the Oxford English Dictionary is “to urge onward and direct the course of to guide a vehicle or the animal that drives it”;

3. that driving, in reference to a motor vehicle, connotes both propulsion and direction. The steering wheel is essential for driving as are the gear stick, the accelerator pedal and the braking system;
4. In *Ames v MacLeod*, a Scottish case, the accused, who was alleged to have been driving a motor car had been walking beside it as it ran down the slight incline as he steered it. The judges of the Court of Sessions held that the substantial test was whether the accused was controlling the movement and direction of the car and they were of the opinion that he was.

On behalf of Mikey it has been submitted that-

1. In the Road Traffic Act (U.K.) the definition of "driver" is as follows – "driver" where a separate person acts as a steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle. The omission therefore, of any reference to a steersman in the Road Traffic Act points with certainty to the conclusion that a steersman is not a driver;
2. In *Wallace v Major* [1946] K.B. 473, the defendant who had no driver's permit sat in the driver's seat of a disabled motor car while it was being towed by another car. Lord Goddard, C.J. said that "we are bound to construe that Act strictly and ought not to stretch the language in any way; and in my judgement it is impossible to say that a person who is merely steering a vehicle that is being drawn by another vehicle is driving that vehicle".

As a magistrate hearing the matter what is your judgment? Give reasons.



**QUESTION 5**

Jane, age 16, was convicted under section 12(1) of the Juvenile Delinquents Act of causing a disturbance in a public place by using obscene language. Section 12(2) of the Act provides:

“Where a juvenile is convicted under subsection (1), the court may impose a fine, order the committal of the juvenile to a probation officer, order that the juvenile reports to the court or a probation officer, place the juvenile in a foster home or impose upon the juvenile such other conditions as the court thinks fit”.

Sections 20 and 28 of the Act provides –

“20. The action taken shall in every case be that which the court is of the opinion that the child’s own good and the best interest of the community required....

28. The care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and as far as practicable every juvenile delinquent shall be treated as a misguided child in need of encouragement and help”.

By way of penalty, the court ordered that Jane’s driver’s licence be suspended for six months. Jane’s attorney has appealed on the ground that the sentence imposed by the court under section 12(2) was beyond the court’s jurisdiction, not being of a kind contemplated by that section.

As counsel for the prosecution, what would your argument be in response?

## QUESTION 6

Corporal Goody, tells you that on April 16, 2004, Tony Tough, an attorney-at-law, entered the charge room at the City Centre Police Station at about 6:30 p.m. and requested that he enter in the station diary a report in reference to a client of his detained at the station. Goody thereupon informed him that his report was not a kind intended for the diary.

Tony Tough then started to strike the counter with his fist and demanded in a loud voice that the report be entered. When Goody again refused to do so, Tough took the diary, which was on the counter and made two circles, against the time column while still demanding at the top of his voice that his report be entered. When he was requested to hand over the diary he threw it down on the counter with a loud bang.

Tony Tough was then arrested and charged with disorderly behaviour contrary to section 56 of the Summary Offences Act.

Section 56 provides as follows –

“56. Every person who in any police station is guilty of riotous, indecent or disorderly behaviour shall be liable to a fine of two hundred dollars or to imprisonment for two months”.

The magistrate before whom the matter was tried acquitted Tony Tough holding that his conduct did not in his opinion amount to disorderly behaviour, that he did not use obscene language and that there was no breach of the peace.

Corporal Goody wishes to appeal this judgment and has sought your advice.

What is your advice? Give reasons.

## QUESTION 7

Your client, Garner Daniels, was appointed attorney under the following Power of Attorney.

"KNOW ALL MEN BY THESE PRESENTS that I LEON BEHARRY, Accountant of 659 East 54<sup>th</sup> Street New York City, New York HEREBY APPOINT GARNER DANIELS, Farm Manager of 25 Main Street, Independence Square, St. Josephs to be my true and lawful attorney for me and in my name and for my use to perform the following acts and things that is to say:

1. To lease my house for two years with an option by the landlord to renew for an additional two years.
2. To deposit the rent from the dwelling house to my savings account at the International Bank, Independence Square branch.
3. To sell my motor car and to deposit the proceeds of sale to the said account.
4. To withdraw the interest accrued from the said account to maintain the house.
5. To construct on my seaside lot at East End Bay a beach cottage comprising 1,500 square feet the plans of which are with my architect, Simon Simple.
6. To operate the cottage as a resort cottage.
7. To maintain the cottage from the rent obtained.

8. To operate and manage my orchid farm at Sunnyvale Estate, Mount Esau.”

The Power was properly executed and registered/recorded.

Mr. Daniels has come to see you. He tells you that his attempts to carry out the terms of the Power have so far been futile as various attorneys-at-law have advised their clients – prospective lessees, the bank, prospective building engineers, the collector of taxes and the Villa Properties Association - not to enter into any legal arrangements with him.

He therefore seeks your advice. Advise him.

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### QUESTION 8

The Criminal Justice Act which came into force on January 8, 2003, provides as follows at section 20:

“(1) Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person because that person is an alleged accomplice of the accused is hereby abrogated.

(2) Nothing in this section applies in relation to:

(a) any trial on indictment; or

(b) any proceedings before a Magistrates' Court, which begun before the commencement of this Act.”

Kent was charged for murder on June 13, 2002 and the case for the prosecution rested largely on the evidence of Joe, a self-confessed accomplice of Kent. Proceedings were completed in October 2002 when Kent was committed for trial.

The trial began on April 24, 2004 and the judge in the course of his summing up did not give any warning to the jury that it was dangerous to convict on the uncorroborated evidence of Joe.

Kent was convicted of murder and now wishes to appeal on the ground that the judge had erred in failing to give the warning since the new law came into effect after he, Kent, was charged.

Advise Kent.

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